APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,290	12/12/2003	Warren Keith Edwards	D/A3420	4296

35700   7590   08/02/2010
CASCADIA INTELLECTUAL PROPERTY
500 UNION STREET
SUITE 1005
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EXAMINER
YAARY, MICHAEL D

ART UNIT	PAPER NUMBER
2193	

MAIL DATE	DELIVERY MODE
08/02/2010	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	10/736,290	EDWARDS ET AL.
	Examiner	Art Unit	
	MICHAEL YAARY	2193	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>22 February 2010</u>.

2a) ☒ This action is **FINAL.**   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>1-10,13-23 and 26-28</u> is/are pending in the application.

  4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) <u>1-10, 13-23, and 26-28</u> is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

  a) ☐ All b) ☐ Some * c) ☐ None of:

  1. ☐ Certified copies of the priority documents have been received.

  2. ☐ Certified copies of the priority documents have been received in Application No. _____.

  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

  * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1.   Claims 1-10, 13-23, and 26-28 are pending in the application,

Response to Arguments

2.   Applicant's arguments filed 05/24/2010 have been fully considered but they are

not persuasive. Applicant argues that Brewer does not teach of testing, by an

installation predicate object, the hardware and software components of a requesting

system and the combination of Schmidt, Brewer, and Chase, is improper.

        Examiner respectfully disagrees. When taken in combination the references of

Schmidt, Brewer, and Chase teach the claimed limitations. More specifically Brewer, as

cited in the rejection below, teaches of a checking mechanism to receive an installation

predicate object comprising code from the service host system. Column 20, lines 34-52;

column 21, lines 1-5; column 21, lines 56- 67; and fig. 5 disclose a host and network

server where code is used in determining whether sufficient resources are present, thus

testing the requesting system including hardware and software components. The instant

independent claims do not further recite limitations on the testing done by the checking

mechanism and therefore the prior art teaches the claimed limitations.

        In response to applicant's argument that the combination of references is

improper, the examiner recognizes that obviousness may be established by combining

or modifying the teachings of the prior art to produce the claimed invention where there

is some teaching, suggestion, or motivation to do so found either in the references

themselves or in the knowledge generally available to one of ordinary skill in the art.

See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), *In re Jones*, 958 F.2d

347, 21 USPQ2d 1941 (Fed. Cir. 1992), and *KSR International Co. v. Teleflex, Inc.*, 550

U.S. 398, 82 USPQ2d 1385 (2007). In this case, the references of Schmidt, Brewer,

and Chase are properly combined with sufficient motivation to do so as seen in the

rejection below. Schmidt is directed to an apparatus and method for automatic receiving

and installation of applications. Brewer is directed to a platform for processor

communication involved in performing tasks and for upgrading. The benefit of modifying

Schmidt with the teachings of Brewer is for providing a simple, standard method for

loading code onto processors allowing complex applications to be generated from

multiple discrete routines. Further motivation to combine can be found in the encryption

techniques provided by Brewer. The reference of Chase teaches of installation in a

computing environment. More specifically copying and installing an OS in a cluster

computing environment. One of ordinary skill in the art would have sufficient motivation

to combine the teachings of Schmidt and Brewer with the teachings of Chase; as

utilizing the requesting systems/clients as servers would significantly reduce traffic flow

to any one host server thus avoid bottlenecking issues.

Claim Rejections - 35 USC § 103

3.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

4.   Claims 1-10, 13-23, and 26-28 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Schmidt et al (hereafter Schmidt)(US Pat. 6,546,554) in view of

Brewer (US Pat. 6,219,787) and Chase-Salerno et al (hereafter Chase)(US Pat.

7,240,107).

Schmidt, Brewer, and Chase were cited in the previous office action dated

02/22/2010.

5.   **As to claims 1, 14, and 28,** Schmidt discloses a system for providing self-

installing software components for network service execution (abstract), comprising:

A service host system to store network service software for a service and to

generate a code bundle comprising the network service software and installation

instructions for the network service software (system of fig. 4);

A requesting system to communicate with the service host system through a

basic communication framework (figs. 2 and 4), comprising:

A checking mechanism to remotely determine availability of the network

service software on the service host system (column 6, lines 18-32-JNet Helper checks

proxy) and to verify prerequisites against a runtime environment through the service

host system (abstract and column 2, lines 13-39 – environment associated with

registered browser);

        A helper mechanism to receive the code bundle providing the network

service software (abstract and column 2, lines 13-39) for the service through the service

host system and to install the network service software using the installation instructions

(JAR file, abstract, and column 2, lines 13-39).

6.   Schmidt does not explicitly disclose the checking mechanism to receive an

installation predicate object comprising code from the service to host system and testing

hardware and software components of the requesting system. However, Brewer

discloses the checking mechanism to receive an installation predicate object comprising

code from the service to host system to test the requesting system and testing hardware

and software components of the requesting system (Column 20, lines 34-52; column 21,

lines 1-5; column 21, lines 56-67; and fig. 5 disclose a host and network server where

code is used in determining whether sufficient resources are present, thus testing the

requesting system.).

7.   Therefore, it would have been obvious to one of ordinary skill in the art at the

time of the invention at the time of the invention to modify the teachings of Schmidt by

incorporating a predicate object comprising code performing testing, as taught by

Brewer, for the benefit of providing a simple, standard method for loading code onto

processors and providing complex applications to be generated from multiple discrete
routines (Brewer, column 21, lines 10-25).

8.   The combination of Schmidt and Brewer does not disclose a service mechanism
to provide a service of equivalent functionality to the service of the service host system
to one or more other requesting system that is independent of the service host system

        However, Chase discloses a service mechanism to provide a service of
equivalent functionality to the service of the service host system to one or more other
requesting system that is independent of the service host system (Column 3, lines 10-
24 disclose a system in which a server installs data onto a client, in this case operating
system software. Once installation is complete the client restarts and now becomes a
server itself. Thus with complete installation the client node becomes a server node and
has equivalent functionality independent of the server.).

9.   Therefore, it would have been obvious to one of ordinary skill in the art at the
time of the invention to modify the teachings of Schmidt and Brewer, by providing
installation techniques, as taught by Chase; for the benefit of avoiding bottlenecks as
utilizing the requesting systems/clients as servers would reduce traffic flow to any one
host server or host system.

10.   **As to claims 2 and 15,** the combination of Schmidt, Brewer, and Chase teaches
a set of standardized method definitions provided through a public interface defined on

the network service software (Schmidt, column 2, lines 22-26 - class path as a set of Universal Resource Identifiers).

11.   **As to claims 3 and 16,** the combination of Schmidt, Brewer, and Chase disclose the standardized method definitions are selected from the group comprising at least one of an availability method (Schmidt, column 2, lines 16-21), environment verification method, code retrieval method, and an update method (Schmidt, column 2, lines 30-34 – auto install).

12.   **As to claims 4 and 17,** the combination of Schmidt, Brewer, and Chase disclose the network service software is updated through the service host system (Schmidt, column 12, lines 33-49).

13.   **As to claims 5 and 18,** the combination of Schmidt, Brewer, and Chase disclose an installation predicate object defined on the service host system to verify that the runtime environment satisfies prerequisites necessary to install and execute the network service software (Schmidt, column 2, lines 15-24 – environment tied to helper application, registered browser metafile).

14.   **As to claims 6 and 19,** the combination of Schmidt, Brewer, and Chase disclose the installation predicated object is implemented in at least one of mobile code (Schmidt, column 4, lines 34-52) for execution within a managed code platform

(Schmidt, JAVA - inherently has a Virtual Machine (JVM)) and in platform-specific native code (Schmidt, column 14, lines 28-57).

15.   **As to claims 7 and 20,** the combination of Schmidt, Brewer, and Chase disclose a helper object defined on the service host system to locate and obtain copies of one or more network service software components necessary to satisfy one or more of the prerequisites (Schmidt, column 2, lines 13-39).

16.   **As to claims 8 and 21,** the combination of Schmidt, Brewer, and Chase disclose the helper object (Schmidt, column 2, lines 30-39) is implemented in at least one of mobile (Schmidt, column 4, lines 34-52) for execution within a managed code platform (Schmidt, JAVA - inherently has a Virtual Machine (JVM)) and in platform-specific native code (Schmidt, column 14, lines 28-57).

17.   **As to claims 9 and 22,** the combination of Schmidt, Brewer, and Chase disclose an update object defined on the service host system to identify (Schmidt, JNet Help as per claim 1), retrieve and install any updates to the network service software (Schmidt, abstract – download and install).

18.   **As to claims 10 and 23,** the combination of Schmidt, Brewer, and Chase disclose the update object is implemented in at least one of mobile code (Schmidt, column 4, lines 34-52) for execution within a managed code platform (Schmidt, JAVA -

inherently has a Virtual Machine (JVM)) and in platform-specific native code (Schmidt,

column 14, lines 28-57).

19.   **As to claims 13 and 26,** the combination of Schmidt, Brewer, and Chase

disclose the basic communication framework comprises a Java operating environment

(Schmidt, column 17, lines 1-5, JAVA platform - the JVM inherent part of Java).

20.   **As to claim 27,** the combination of Schmidt, Brewer, and Chase disclose a

computer-readable storage medium holding code for performing the method according

to claim 14 (Schmidt, figure 1, #34 – fixed disk).

Conclusion

    THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

    A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to MICHAEL YAARY whose telephone number is

(571)270-1249. The examiner can normally be reached on Mon-Fri 9 a.m.-5:30 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Lewis Bullock can be reached on 571-272-3759. The fax phone number for

the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the

Patent Application Information Retrieval (PAIR) system. Status information for

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Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a

USPTO Customer Service Representative or access to the automated information

system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/M. Y./
Examiner, Art Unit 2193

/Lewis A. Bullock, Jr./
Supervisory Patent Examiner, Art Unit 2193